IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Prem & Others Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.150/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 5-3-2001 in Sessions Case No.66/1995 passed by Shri C.P.Singh, RHJS, Additional Sessions Judge Bayana (Bharatpur).

Date of Judgment: March 23, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for the appellants.
Mr. Kamlendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants, five in number, were put to trial before learned Additional Sessions Judge Bayana (Bharatpur) in Sessions Case No.66/1995, who vide judgment dated March 5, 2001 convicted and sentenced them as under:-

Prem, Panda, Dilip, Bharat and Abhay Singh:
U/s.302/149 IPC:
Each to suffer imprisonment for life and fine Rs.100, in default to further suffer seven days rigorous imprisonment.

Abhay Singh:
U/s.307 IPC:
To suffer rigorous imprisonment for five years and fine Rs.100/- in default to further suffer seven days rigorous imprisonment.
Prem, Panda, Dilip and Bharat:

U/s.307/149 IPC:

Each to suffer rigorous imprisonment for five years and fine Rs.100/- in default to further suffer seven days rigorous imprisonment.

Prem and Panda:
U/s.147 IPC:

Each to suffer rigorous imprisonment for six months.

Dilip, Bharat and Abhay Singh:
U/s.148 IPC:

Each to suffer rigorous imprisonment for one year.

Substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Gyan Singh (Pw.4) submitted a written report (Ex.P-8) at Police Station Bayana on May 23, 1995 with the averments that his nephew Hansraj entered into marriage with Prem daughter of Ram Lal and sister-in-law of Sujan. Because of this reason in the preceding night around 12.30 AM Sujan and other accused persons came armed with Guns and lathi. Prem and Panda started beating with lathis to Harbhan whereas Sujan, Dilip, Abhay Singh and Bharat opened fire as a result of which Harbhan died and Hansraj received injuries. On that report a case under sections 147, 148, 149, 307 and 302 IPC was registered and investigation commenced. After due investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Bayana (Bharatpur). Charges under sections 147, 148, 302 and 307/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. On hearing final submissions learned trial Judge convicted and sentenced the

appellants as indicated herein above.

4. We have heard the rival submissions and scanned the material on record.

5. Death of Harbhan was homicidal in nature. Vide Post Mortem Report (Ex.P-14) following ante mortem injuries were found on the dead body:-

> 1. Gun shot wound
> (i) Wound of entry oval wound 1cm x ¾ cm blackened and inverted margins in lt. iliac region 10cm away from umbilicus
> (ii) Wound of exit 5cm x 4cm with everted & irregular margins with expulsion of small gut through this wound in left lumber region.

Dr. Shri Ram Kumar Gupta (Pw.14), who conducted autopsy on the dead body deposed that the cause of death was hemorrhagic shock by gun shot wound over abdomen causing injury to small intestine, large intestine and iliac bone right.

6. Hansraj (Pw.2) vide injury report (Ex.P-7) received one gun shot wound 17cm x 12cm on postro lateral aspect of right thigh.

7. Factual situation emerges from the evidence adduced at the trial may be summarized thus:-

(i) Incident occurred around 1 AM in the night when the deceased Harbhan and injured Hansraj (Pw.2) were sleeping.

(ii) Hansraj (Pw.2) in his deposition stated as under:-

"चाचा हरभान बचने के लिए थोडा 24 कदम पीछे हटा तो सुजान ने उसके बन्दूक से

फायर कर उसकी बगली में चोट पहुंचाई। गोली लगने से हरभान गिर गया और मर गया।"

Hansraj further deposed thus:-

"अभय ने मेरे बन्दूक की गोली मारी जो मेरे दाहिने पैर की जांघ मे लगी ... दिलीप व भरत ने भी मुझे मारने के लिए गोली से फायर किए थे परन्तु मैं अभय सिंह की गोली लगने के बाद नीचे गिर गया था, बच गया और वो फायर दीवार में लगे थे।"

(iii) Dilip, Abhay, Bharat, Prem and Panda neither had common object nor did they share common intention with Sujan to kill Harbhan.

(iv) Evidence of Hansraj (Pw.2) and other witnesses is not consistent qua Prem & Panda and possibility of their over implication cannot be ruled out.

(v) Sujan was charged under section 302 IPC and he absconded during the pendency of trial.

8. Since accused Sujan was charged under section 302 IPC for his individual act to kill Harbhan and he is not before us, we refrain ourselves from making any observation against him.

9. In so far as allegations against appellants Dilip, Abhay and Bharat are concerned, charge under section 307 IPC is ex-facie established against them. All the three opened fire at Hansraj with the intention to kill him. In point of gravity Section 307 graduates the offence of attempt to murder:

(i) When the act stops short of causing hurt, and

(ii) When it causes hurt.

In each case, there is an `attempt', that is to say, a definite step taken towards the commission of murder.

10. The act of Bharat and Dilip in opening fire stops short of causing hurt to Hansraj whereas the fire opened by Abhay Singh caused injury on the person of Hansraj. Thus all the three appellants Bharat, Dilip and Abhay Singh are guilty under section 307 IPC.

11. Charges under sections 302/149 and 148 IPC however are not found established against them. The prosecution also failed to prove guilt of appellants Prem and Panda under sections 147, 307/149 and 302/149 IPC beyond reasonable doubt.

12. For these reasons, we dispose of the instant appeal in the following terms:-

(i) We allow the appeal of appellants Prem and Panda and acquit them of the charges under sections 147, 307/149 and 302/149 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellants Dilip, Bharat and Abhay Singh and while acquitting them of the charges under sections 148 and 302/149 IPC, we convict each of them under section 307 IPC. Looking to the fact that all these three appellants have already undergone confinement for a period more than six years, the ends of justice would be met in sentencing them to the period already undergone by them in confinement. The appellants Dilip, Bharat and Abhay Singh, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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